



## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Notice of Issuance of Final Determination Concerning Video Surveillance and Data Management System

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of a video surveillance and data management system. Based upon the facts presented, CBP has concluded in the final determination that the imported components of the subject video surveillance and data management system undergo substantial transformation in the United States when made into the final VMS assembly.

**DATES:** The final determination was issued on April 10, 2023. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Austen Walsh, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-0114.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on April 10, 2023, U.S. Customs and Border Protection (CBP) issued a final determination concerning the country of origin of a video management and surveillance system for purposes of title III of the Trade Agreements Act of 1979. This final determination, HQ H327997, was issued at the request of Security Lab Inc. (“Security Lab”), under procedures set forth at 19 CFR part 177, subpart B, which implements title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP has concluded that, based upon the facts presented, the

imported components are substantially transformed in the United States when made into the subject video surveillance and data management system.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

**Dated:** April 21, 2023.

**Alice A. Kipel,**  
*Executive Director,  
Regulations and Rulings,  
Office of Trade.*

**HQ H327997**

**April 10, 2023**

**OT:RR:CTF:VS H327997 AMW**

**CATEGORY:** Origin

Gene W. Rosen, Esq.  
Gene Rosen Law Group  
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**RE:** U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Security Lab Inc.; Country of Origin of Video Surveillance and Data Management System; Substantial Transformation

Dear Mr. Rosen:

This is in response to your request of September 21, 2022, on behalf of your client, Security Lab Inc. (“Security Lab”), for a final determination concerning the country of origin of a video management and surveillance system pursuant to Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of Part 177, U.S. Customs and Border Protection (“CBP”) Regulations (19 CFR 177.21, *et seq.*). Security Lab is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a) and is therefore entitled to request this final determination.

## FACTS:

Security Lab produces a product described as the “video management and surveillance system” (“VMS”). As outlined in your request, the VMS is a hardware system consisting of a camera array and central computer system designed to conduct and manage video surveillance operations that “is capable of handling up to 64 cameras per server simultaneously and can be used to power hundreds of servers within a single, centrally administered system....”

The VMS comprises foreign-origin components that are assembled in the United States to create hardware that is then combined with U.S.-origin software, including the Security Lab Application Software and Microsoft Windows. The hardware components consist of the following items:

- Chassis (product of Taiwan)
- Partially completed motherboard (product of China)
- Central processing unit (“CPU”) (product of Costa Rica, Vietnam, or Malaysia)
- Hard disk drive (“HDD”) (product of Singapore or Thailand)
- Optical drive (product of China)
- Memory modules (product of China)
- Graphics cards (product of China)
- Alarm boards (product of China)
- Serial attached technology attachment (“SATA Controller”) (product of Taiwan)
- Redundant array independent disk controller (“RAID controller”) (product of Singapore)
- Power supply unit (“PSU”) (product of China),
- Computer fans (product of China)
- Network interface card (“NIC”) (product of Taiwan)
- Network camera (product of Taiwan, the Republic of Korea, or China)
- Computer keyboard (product of China), and
- Computer mouse (product of China).

In addition, you state that the remaining “minor” components (*e.g.*, cables, brackets, bezels, screws, and straps) will be sourced from a variety of countries. Your request indicates that, as explained in further detail below, the items will be assembled into a “computer” unit (*i.e.*, the “system assembly”), which is housed in the chassis, and contains the motherboard, CPU, HDD, memory modules, graphics cards, alarm boards, SATA controller, RAID controller, PSU, fans, and NIC. The computer unit will control the operation of the network cameras, and will be operated by a user utilizing the keyboard and mouse. Of the countries of origin provided for each component, Taiwan, Singapore, Costa Rica, and the Republic of Korea are each TAA-designated countries while Vietnam, Malaysia, and China are not.

The VMS manufacturing process consists of the following five phases: (1) order management; (2) hardware manufacturing; (3) application software, operating system and systems installation, configuration and management; (4) quality control and assurance; and (5) order and system closeout and final checks. In greater detail, these steps occur as follows:

- Order Management: After receiving a customer order, Security Lab employees issue a work order for the quantity of VMSs to be assembled, identifying the model number

and requirements for the items to be manufactured. Security Lab employees then identify the bill of materials necessary.

- Hardware Manufacturing: This phase involves the assembly of the VMS hardware, subassemblies, and components. The process involves the use of an electric screwdriver, hot glue, harness connections, and tie strips. The assembly process involves up to 30 steps and occurs over the course of 60-90 minutes.
- Application Software, Operating System and Systems Installation, Configuration and Management: During this phase, Security Lab programmers, developers, testers, and hardware engineers design, develop and code the relevant version of the Security Lab Application Software to configure each system on a build-to-order basis. The software is integrated, installed, and configured into the completed hardware via an 18-step process occurring over the course of 60-90 minutes.
- Quality Control and Assurance: This phase involves a Security Lab employee conducting a 14-step quality control check and testing process of each VMS, including testing video and audio performance and network functionality. This phase occurs over the course of approximately 60 minutes.
- Order and System Closeout/Final Checks: This phase involves a six-step, 15-minute closeout process in which photographs of the complete VMS are taken and a tamper seal is placed along the VMS chassis.

According to your submission, the Security Lab Application Software is designed and coded in the United States by Security Lab programmers on a C, C++ framework. The software includes the following capabilities: real-time audio, video, and data recording, viewing, listening, playback, storage, information management, situational awareness, and security device control. The Security Lab Application Software functions by receiving “communication” and “interoperability” instructions from the hardware’s firmware and application program interfaces (“APIs”). You state that, in this case, the firmware is programming that is written to the hardware device’s memory and that an API is a “software intermediary that allows two applications to ‘talk’ to each other.”

## ISSUE:

Whether the imported components are substantially transformed when made into the subject VMS in the United States.

## LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III, Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-2518).

CBP’s authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, **an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.**

Emphasis added.

The Secretary of the Treasury's authority mentioned above, along with other customs revenue functions, are delegated to CBP in the Appendix to 19 CFR Part 0 - Treasury Department Order No. 100-16, 68 Fed. Reg. 28, 322 (May 23, 2003).

The rule of origin set forth in 19 U.S.C. 2518(4)(B) states:

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

*See also* 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Acquisition Regulation ("FAR"). *See* 19 CFR 177.21. In this regard, CBP recognizes that the FAR restricts the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The FAR, 48 CFR 25.003, defines "U.S.-made end product" as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Section 25.003 defines "designated country end product" as:

a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines "WTO GPA country end product" as an article that:

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Once again, we note that the VMS is assembled in the United States with components sourced from a variety of TAA-designated countries (*i.e.*, Taiwan, Singapore, Costa Rica, and

the Republic of Korea) as well as several non-TAA countries (*i.e.*, China, Vietnam, and Malaysia).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

A new and different article of commerce is an article that has undergone a change in commercial designation or identity, fundamental character, or commercial use. A determinative issue is the extent of the operations performed and whether the materials lose their identity and become an integral part of the new article. *See Nat'l Hand Tool Corp. v. United States*, 16 CIT 308 (1992), *aff'd*, 989 F.2d 1201 (Fed. Cir. 1993). "For courts to find a change in character, there often needs to be a substantial alteration in the characteristics of the article or components." *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308, 1318 (Ct. Int'l Trade 2016) (citations omitted).

In instances in which component production or assembly occurs in multiple countries and no single country's operations dominate the manufacturing operations, CBP has looked to the location at which final assembly occurs. In CBP Headquarters Ruling ("HQ") H170315, dated July 28, 2011, CBP was asked to determine the country of origin for an imported satellite telephone that contained Malaysian-origin circuit boards and U.K.-origin software and that underwent final assembly and programming in Singapore. In that matter, CBP noted, there existed "three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore." Although the Malaysian-origin boards and U.K.-origin software were important to the function of the device, CBP determined Singapore to be the proper country of origin because it had been the site of the last substantial transformation. Similarly, in HQ H203555, dated April 23, 2012, CBP considered the country of origin of oscilloscopes containing Malaysian-origin circuit boards assembled in Singapore and programmed with U.S.-origin software. Once again, CBP observed that no one country's operations dominated the manufacturing process, but that the final assembly in Singapore completed the oscilloscopes and, therefore, the last substantial transformation occurred in that country.

In the present matter, you argue that the country of origin of the VMS is the United States because you believe that the last substantial transformation occurs in the United States. You state that hardware assembly and the installation of the U.S.-origin software into the U.S.-assembled system assembly results in a new article with a name, character, and use different from the original hardware components.

Here, a plurality of components is sourced from China, although a combined majority is sourced from Taiwan, Singapore, Costa Rica, Vietnam, Malaysia, and Thailand, and elsewhere. Importantly, the major components do not originate from one country, but are instead sourced from a variety of countries: the CPU will originate from either Costa Rica, Vietnam or Malaysia, the partial motherboard from China, and the cameras from either Taiwan, Korea, or China. The assembly in the United States, meanwhile, fully integrates the subassemblies and various component parts into the complete VMS, at which point the U.S.-origin software is installed. No

single country's operations dominate the manufacturing operations of the VMS. The CPU manufactured in Costa Rica, Vietnam or Malaysia is important to the function of the VMS, as is the Chinese-origin motherboard and U.S.-origin firmware and software. The assembly in the United States completes the VMS. This matter is therefore analogous to our determination in HQ H203555, dated April 23, 2012, in which we determined Singapore to be the country of origin for oscilloscope where "there are three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore" but "[n]o one country's operations dominate[d] the manufacturing operations." *See also*, HQ H170315, dated July 28, 2011, scenario III.

Based on the foregoing, we find that the last substantial transformation occurs in the United States, and therefore, the VMS is not a product of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title (i.e., China, Vietnam, and Malaysia). As to whether the VMS assembled in the United States qualifies as a "U.S.-made end product," you may wish to consult with the relevant government procuring agency and review *Acetris Health, LLC v. United States*, 949 F.3d 719 (Fed. Cir. 2020).

#### **HOLDING:**

Based on the information outlined above, we determine that the components imported into the United States undergo a substantial transformation when made into the subject video management system by Security Lab.

Notice of this final determination will be given in the *Federal Register*, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

Alice A. Kipel, Executive Director  
Regulations and Rulings  
Office of Trade